

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-95(WFK)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Friday, September 20, 2019
DILKHAYOT KASIMOV,	:	9:30 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:	RICHARD P. DONOGHUE United States Attorney Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201 BY: DOUGLAS M. PRAVDA, AUSA DAVID KESSLER, AUSA MATTHEW HAGGANS, AUSA
For the Defendant:	ELIZABETH E. MACEDONIO, P.C. 40 Fulton Street-23rd Floor New York, New York 10038 BY: ELIZABETH E. MACEDONIO, ESQ.
For the Defendant:	KELLEY J. SHARKEY 26 Court Street - Suite 2805 Brooklyn, New York 11242 BY: KELLEY J. SHARKEY, ESQ.

1 APPEARANCES:

2 For the Defendant: LORD & SCHEWEL
3 233 Broadway - Suite 2220
4 New York, New York 10279
BY:ABRAHAM RUBERT-SCHEWEL, ESQ.

5 Also present: Erika Lopez, Paralegal Specialist
6
7 Nodira Matyakubova, interpreter
Shahnoca Rahmanova, interpreter

8 Court Reporter: Michele D. Lucchese, RPR, CRR
9 Official Court Reporter
E-mail: MLuccheseENDY@gmail.com

10 Proceedings recorded by computerized stenography. Transcript
11 produced by Computer-aided Transcription.

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1 (In open court - jury not present.)

2 THE COURTROOM DEPUTY: All rise. The Honorable
3 William F. Kuntz, II is now presiding. Criminal cause for
4 trial. Docket No. 15-CR-95, USA versus Kasimov.

5 Counsel, please state your appearances for the
6 record, including the Uzbek interpreter.

7 MR. PRAVDA: Good morning, Your Honor, Doug Pravda,
8 David Kessler, Matthew Haggans, and Erika Lopez for the United
9 States.

10 THE COURT: Good morning. We have the spellings.
11 You could be seated.

12 Ladies and gentlemen of the public, you could be
13 seated as well as.

14 MR. PRAVDA: Special Agent Dolan had a family
15 emergency this morning, so she won't be joining us today.

16 THE COURT: Okay. I'm sorry to hear that. Give the
17 agent our best.

18 Yes.

19 MS. MACEDONIO: Good morning, Your Honor. Elizabeth
20 Macedonio, Kelley Sharkey, and Abraham Rubert-Schewel for Mr.
21 Kasimov.

22 MS. SHARKEY: Good morning, Judge.

23 THE COURT: Good morning.

24 And also at counsel table?

25 THE INTERPRETER: Nodira Matyakubova, Uzbek

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1 interpreter, N-O-D-I-R-A, last name M-A-T-Y-A-K-U-B-O-V-A.

2 THE COURT: Thank you. And also.

3 THE INTERPRETER: Shahnoca Rahmanova, Uzbek
4 interpreter, S-H-A-H-N-O-C-A. And the last name
5 R-A-H-M-A-N-O-V-A.

6 THE COURT: Thank you. You are may be seated. Do
7 we have any -- and the defendant is present. Yes. Good
8 morning. Do we have any procedural issues to address before
9 we bring in the jury?

10 MR. PRAVDA: Your Honor, just very, very briefly. I
11 have a revised witness list to update what has happened during
12 the trial. I have a revised witness list to update what has
13 happened during the trial and who remains to be called. I
14 have provided a copy to Ms. Macedonio. I have shared the list
15 with the court reporter and I have a copy that I can hand up
16 to Mr. Jackson.

17 THE COURT: Yes, of course, thank you, Mr. Pravda.
18 Thank you.

19 MR. PRAVDA: And then, just for the record, Special
20 Agent Vu, who was not present for the cross-examination
21 testimony of Mr. Habibov is now back and present in the
22 courtroom.

23 THE COURT: Yes. Thank you.

24 Any other procedural issues from the Government
25 before we bring in the jury?

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1 MR. PRAVDA: No, Your Honor.

2 THE COURT: From the defense, any procedural issues
3 before we bring in the jury?

4 MS. MACEDONIO: No, Your Honor.

5 THE COURT: All right. Mr. Jackson, let the CSO
6 know to bring in the jury.

7 Have you filed this the Government's second revised
8 list of potential witnesses under seal on ECF or should I have
9 Mr. Jackson do that? It has to be part of the record
10 electronically, as well as the paper copy.

11 MR. PRAVDA: We are happy to do that.

12 THE COURT: Why don't you do it?

13 MR. PRAVDA: Or Mr. Jackson could do it.

14 THE COURT: So why don't you guys do it if you
15 wouldn't mind? File it under seal. Obviously, it will be
16 accessible to the defendants. I think it should be filed
17 electronically.

18 MR. PRAVDA: That's fine. Mr. Kessler advised me he
19 can do it on his laptop this morning.

20 THE COURT: I admire you youths for being able to do
21 such things.

22 MR. PRAVDA: Should we bring in the witness, Your
23 Honor?

24 THE COURT: Beg your pardon?

25 MR. PRAVDA: Should we bring in the witness, Your

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1 Honor, while we're getting the injury?

2 THE COURT: Oh, yes. We still have the incarcerated
3 witness.

4 MR. KESSLER: No. The witness who was on at the
5 close of court yesterday.

6 THE COURT: We can wait then until the jury is
7 seated.

8 MS. MACEDONIO: May we have a moment? I don't think
9 Mr. Kasimov is feeling very well.

10 THE COURT: Oh, I'm terribly sorry. All right.
11 Well, you tell me. Should we tell the CSO not to bring in the
12 jury?

13 MS. MACEDONIO: Yes.

14 THE COURT: All right we can do that. I'm sorry.
15 And just say we are going to be another what, 15 minutes?

16 Tell the CSO to hold them.

17 MS. MACEDONIO: Well, Judge, we would like -- the
18 mic is not working, I don't think.

19 THE COURT: You have to go old school and project.
20 Go ahead.

21 MS. MACEDONIO: We would like him to have some
22 Tylenol, which we have. We know that sometimes there is a
23 concern with that, but he has a splitting headache and is
24 starting to feel nauseous from the headache. He believes that
25 Tylenol will do the trick. Could we give it to him?

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1 THE COURT: Well, let me ask what the Government's
2 view is with respect to Tylenol and they will probably want to
3 know how many tablets, what the strength is. I can call my
4 brother, and my wife, or my daughter, each of whom are
5 physicians, but, you know. What is the strength, how many?

6 MS. MACEDONIO: The strength is 50 milligrams each
7 and the recommended dosage is I believe -- let me see.

8 THE COURT: I can see why none of us went to medical
9 school.

10 MS. MACEDONIO: Two tablets every six hours.

11 THE COURT: Why don't you show it to the Government,
12 see if they have any problem with the defendant taking two
13 Tylenols with water, I trust.

14 MS. MACEDONIO: Thank you, Judge.

15 THE COURT: Is that acceptable?

16 MR. PRAVDA: Yes, it is. It is acceptable.

17 THE COURT: There you go. This does not mean that I
18 am practicing medicine without a license. I don't want to
19 hear from the judicial ethics people about that, or my wife
20 for that matter about that.

21 MS. SHARKEY: Can we give it ten minutes to take
22 effect, 15 minutes to take in effect?

23 THE COURT: Sure. Why don't we sit here and wait
24 until he is good to go.

25 MS. SHARKEY: Thank you, Judge.

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1 (Pause in the proceedings.)

2 THE COURT: Is everything good now? All the systems
3 are good? Everybody has what they need to have?

4 MR. HAGGANS: For the Government as well.

5 THE COURT: Let me ask defense counsel: How is your
6 clients's head?

7 Are you good? Sir? Yes?

8 MR. ABRAHAM RUBERT-SCHEWEL: Yes, Your Honor.

9 MS. SHARKEY: Thank you, Judge. Thank you very
10 much.

11 THE COURT: There is an old saying, if you love law
12 or sausage, never watch either being made. What can I tell
13 you.

14 All right. Are we now all systems go? Yes? We can
15 release the techies and call them back if we need them. Yes?

16 MR. PRAVDA: Yes.

17 THE COURT: From defense?

18 MR. RUBERT-SCHEWEL: Yes.

19 MR. PRAVDA: Yes, we can release the techs.

20 THE COURT: Okay. Release the techs.

21 MR. PRAVDA: Your Honor, the Government has an
22 application.

23 THE COURT: I hope it's not electronic.

24 MR. PRAVDA: So, the Government's next witness,
25 Craig Roth, has a wedding that he needs to leave for. We

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1 anticipated finishing the first witness and then putting him
2 on. At this point, we believe it would be more prudent to go
3 out of order even though Mr. Rivera is continuing over from
4 yesterday.

5 THE COURT: I don't mind taking a witness out of
6 order. Is that the application, to take a witness out of
7 order?

8 MR. HAGGANS: Yes.

9 MR. PRAVDA: Yes.

10 THE COURT: Any objection?

11 MS. MACEDONIO: No.

12 THE COURT: The application is granted. Let's do
13 it.

14 So who is the next witness going to be?

15 MR. HAGGANS: Craig Roth, Your Honor.

16 THE COURT: Let's bring him forward and get the jury
17 in. We will get him sworn.

18 We don't need any electronics for this witness or do
19 we?

20 MR. HAGGANS: We do not.

21 THE COURT: I will administer the oath and get the
22 jury in. Tell the CS0 to bring the jury in.

23 I am going to ask you, sir, just to come into the
24 witness box, stand in the middle. When we get the jury in, I
25 will administer the oath. My courtroom deputy is off doing

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1 something else and he will be back and then we will be good to
2 go, sir.

3 MR. HAGGANS: For Your Honor's information, I will
4 be able do this without the use of the ELMO if I am permitted
5 to hand the witness a couple of items.

6 THE COURT: What you will do is ask Mr. Jackson or
7 one of my law clerks to bring it up to the witness, but
8 leaving the podium is not allowed.

9 (Jury enters the courtroom.)

10 THE COURT: Good morning. Yes, it is still morning.
11 Ladies and gentlemen of the jury, we have had some tech
12 issues, we have had some sidebar issues. We believe we have
13 straightened out most of the tech issues, but I'm the last
14 person in the world to do tech. We have a new witness. We
15 are taking him out of sequence. We will continue with the
16 other witness later on.

17 So, please be seated. Thank you for returning so
18 promptly. I am now going to administer the oath. My
19 courtroom deputy is off doing some other things on this case
20 and he will be back momentarily.

21 Please raise your right hand.

22 (Witness sworn.)

23 THE WITNESS: Yes, I do.

24 THE COURT: Please be seated. I'd like you to state
25 your name, spell it for the court reporter, and then counsel

Roth - direct - Haggans

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1 will inquire.

2 By the way, that microphone, see it, move it close
3 to you. It swivels, okay. When you speak into it, you sound
4 almost like me.

5 THE WITNESS: Okay, thank you.

6 THE COURT: There you go.

7 All right. State your name and spell it and then
8 we'll get started.

9 THE WITNESS: Sure. First name is going to be
10 Craig. C-R-A-I-G. Last name is Roth, R-O-T-H.

11 THE COURT: Thank you.

12 Counsel, you may inquire.

13 CRAIG ROTH,

14 called by the Government, having been duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HAGGANS:

18 Q Good morning, Mr. Roth.

19 A Good morning.

20 Q For whom do you work?

21 A I am currently employed by the FBI.

22 Q Is that Federal Bureau of Investigation?

23 A Yes.

24 Q What is your title at the FBI?

25 A I am an It Specialist, forensic examiner.

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Roth - direct - Haggans

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1 Q How long have you been a forensic examiner with the FBI?

2 A For about nine years now.

3 Q Could you please describe your duties and
4 responsibilities in that position?

5 A Sure. So we preserve, extract, and analyze electronic
6 media in a forensically sound manner.

7 Q What is your educational background?

8 A I have an undergraduate in information technology from
9 the University of Hartford and I have a master's in computer
10 information systems from Boston University.

11 Q Have you received training either as part of your work
12 for the FBI or otherwise in the field of the forensic
13 examination of digital evidence?

14 A Yes, I have.

15 Q What sort of training, if you could briefly describe it?

16 A Sure. So for the first year, you're considered an
17 examiner trainee and for about a year, year and a half process
18 you have to undergo a series of examinations, multiple, you
19 know, external and internal training. And at the end of that,
20 you have to attend a moot trial and also pass a few more
21 examinations as well to be considered a certified examiner.

22 Q Are you a certified examiner?

23 A Yes, I am.

24 Q Have you ever -- during your employment with the FBI,
25 have you ever had the occasion to conduct forensic

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Roth - direct - Haggans

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1 examinations of cellular telephones or mobile telephones?

2 A Yes, I have.

3 Q Could you estimate approximately how many times you have
4 conducted such examinations?

5 A Over the past several years, I'd have to say several 100.

6 Q Have you ever testified in court concerning the results
7 of any such examination?

8 A Yes, I have.

9 Q Approximately how many times?

10 A Three.

11 Q I'm going to show you an item that is in evidence on the
12 ELMO, please.

13 MR. HAGGANS: For the record, this is Government
14 Exhibit 40, four-zero.

15 THE COURT: You may publish.

16 (Exhibit published.)

17 Q Mr. Roth, do you recognize the device in Government
18 Exhibit 40?

19 A Yes, I do.

20 Q What is it?

21 A This is a Samsung LG Flex phone.

22 Q I'm zooming in on this labeling. How is it that -- how
23 is it that you are able to recognize this specific device?

24 A My initials are located as CR. And I also assign a
25 unique bar code to each evidentiary item, which is also listed

Roth - direct - Haggans

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1 right there.

2 Q When you mention your initials, I'm just pointing to a
3 section on the label. Are those the initials you are
4 referencing?

5 A Yes.

6 Q You recognize those to be your initials?

7 A I do.

8 Q This label appears to bear a date. Could you please read
9 that date into the record?

10 A Sure. March 3, 2015.

11 Q Are you familiar with the term forensic extraction as it
12 relates to your work?

13 A Yes, I am.

14 Q Did you perform a forensic extraction of the device
15 contained in Government Exhibit 40?

16 A Yes, I did.

17 Q Did you perform that extraction on or about or around
18 March 3, 2015?

19 A Yes, I did.

20 Q Did you use software to conduct that work?

21 A Yes, I did.

22 THE COURT: I'm sorry, what was the date again in
23 March?

24 THE WITNESS: March 3, 2015.

25 THE COURT: Okay. Go ahead.

Roth - direct - Haggans

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1 Q Did you use software to perform that extraction?

2 A Yes, I did.

3 Q Have you been trained in the use and operation of that
4 software?

5 A Yes, I have.

6 Q In your experience using that software, is that software
7 reliable?

8 A It is, yes.

9 MR. HAGGANS: Mr. Jackson, could I please have the
10 ELMO just for the witness.

11 Q Sir, I'm showing you a disc that has been marked for
12 identification as Government Exhibit 41-B, as in boy. Do you
13 recognize this item, sir?

14 A Yes, I do.

15 Q What is it?

16 A This is an optical disc that contains three files that
17 were extracted from the cell phone report.

18 Q When did you create this disc?

19 A I created this disc this morning.

20 Q And the cell phone report that you referenced, was that
21 the forensic extraction of Government Exhibit 40 about which
22 you previously testified?

23 A Yes.

24 Q Does the information contained on Government Exhibit 41-B
25 contain true and accurate copies of items contained within

Roth - cross - Rubert-Schewel

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1 that forensic extraction?

2 A Yes.

3 Q Does this disc bear your name at some point?

4 A Yes.

5 Q And your initials?

6 A Yes.

7 MR. HAGGANS: Your Honor, at this time I move to
8 admit Government Exhibit 41-B.

9 THE COURT: Any, objection?

10 MR. RUBERT-SCHEWEL: No, Your Honor.

11 THE COURT: It is admitted.

12 (Government's Exhibit 41-B received in evidence.)

13 THE COURT: You may publish it to the jury.

14 MR. HAGGANS: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you.

17 Any cross?

18 MR. RUBERT-SCHEWEL: Very briefly.

19 THE COURT: I hope so.

20 CROSS EXAMINATION

21 BY MR. RUBERT-SCHEWEL:

22 Q Good morning, Mr. Roth.

23 A Good morning.

24 Q You stated that in your career you have examined several
25 100 phone extracts?

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Roth - cross - Rubert-Schewel

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1 A Yes.

2 Q And in this case you completed the extraction of an LG
3 Flex phone?

4 A Correct.

5 Q And from this phone you recovered a number of different
6 types of data?

7 A Cell phone extractions will recover several files off the
8 phones.

9 Q Call logs?

10 A Yes.

11 Q Chats?

12 A Correct.

13 Q Contacts?

14 A I can't remember what exactly was extracted from this
15 phone, but that would be generally what is extracted.

16 Q E-mails?

17 A Correct.

18 Q SMS messages?

19 A It's possible, correct.

20 Q And on this phone there were thousands of files?

21 A Generally there are several thousands of files if the
22 phone is highly used.

23 MR. ABRAHAM RUBERT-SCHEWEL: No further questions.

24 THE COURT: Anything else?

25 MR. HAGGANS: No redirect.

Roth - cross - Rubert-Schewel

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1 THE COURT: You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 (Witness steps down.)

4 THE COURT: Next witness.

5 MR. PRAVDA: Your Honor, the Government would like
6 to resume the examination of Special Agent Marcus Rivera.

7 THE COURT: Yes, please bring him forward.

8 Please resume the witness stand. Special Agent, you
9 are still under the oath.

10 Let me ask you, did you speak with anyone about your
11 testimony since leaving the witness stand yesterday?

12 THE WITNESS: No.

13 THE COURT: All right. Continue, Mr. Pravda.

14 MR. PRAVDA: Thank you, Your Honor. With the
15 Court's permission, I would ask Mr. Jackson to hand the
16 witness Government Exhibit 16, Government Exhibit 20-T as in
17 transcript and Government Exhibit 123-T as in transcript.

18 THE COURT: Are these documents already in evidence?

19 MR. PRAVDA: Except for Exhibit 16, yes, they are.

20 THE COURT: All right. Any objection to Government
21 Exhibit 16 coming in to evidence?

22 MR. RUBERT-SCHEWEL: No, Your Honor.

23 THE COURT: It is admitted. You may publish all of
24 them to the jury.

25 (Government's Exhibit 16 received in evidence.)

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Rivera - direct - Pravda

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1 THE COURT: Thank you, Mr. Jackson. If you would be
2 good enough to get them and put them in front of the witness.

3 Thank you, sir.

4 THE COURTROOM DEPUTY: You're welcome.

5 MARCUS RIVERA,

6 called by the Government, having been previously duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PRAVDA:

10 Q Special Agent Rivera, do you have the document marked
11 Government Exhibit 123-T in front of you?

12 A Yes.

13 MR. PRAVDA: And for the jury's reference, this is
14 in the transcript binder behind tab 123-T.

15 Q Special Agent Rivera, is this a transcript of a telephone
16 conversation?

17 A Yes.

18 Q Did it take place on February 24, 2015 at 11:41 p.m.?

19 A Yes.

20 Q Is the caller Dilkhayot Kasimov?

21 A Yes.

22 Q And who did he call?

23 A Saidakhmetov.

24 Q Now, Agent Rivera, you will notice that these transcripts
25 identify the parties to the conversation as Kasimov and?

Rivera - direct - Pravda

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1 Individual-1: Do you have any knowledge about that?

2 A No.

3 Q Would you please read the call to the jury?

4 A Yes.

5 Individual-1: Hello, peace be upon you.

6 Kasimov: Brother, peace be upon you.

7 Individual-1: And peace be upon you too.

8 Kasimov: Brother, uh, what's it called? Where are
9 you guys?

10 Individual-1: (Overlapping voice.) At terminal.
11 We're at terminal 7.

12 Kasimov: Where? At terminal 7?

13 Individual-1: (Overlapping voice.) Yes. Once you
14 -- once inside, you should have immediately turned to the
15 right, brother.

16 Kasimov: Okay. Oh, okay, (phonetic).

17 Individual-1: (Overlapping voice.) I mean, instead
18 of going straight. You should have turned right at the, uh,
19 whatchamacallit...at the door as soon as you got in. You need
20 to turn to the right. There are some signs there, can you
21 see? It says Ukraine Airlines on them.

22 Kasimov: Oh, yes, I see. I see them.

23 Individual-1: Do you? Are you coming?

24 Kasimov: Uh-huh, I'm here.

25 Individual-1: Okay. [Pause] clears throat [Pause].

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Rivera - direct - Pravda

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1 He can't find us apparently.

2 End of transcript.

3 Q Now, agent Rivera, directing your attention to Government
4 Exhibit 20-T which, for the jury reference, is also located in
5 the transcript binder at the first document under tab 20-T.

6 Agent Rivera, turning to the second page, would you
7 read the portion of the recording that begins 3 hours, 42
8 minutes and 30 seconds into the recording and concludes 3
9 hours, 45 minutes, and 42 seconds into the recording.

10 A Yes.

11 Phone rings in the background.

12 Saidakhmetov: Go, this, get the money from him.

13 I'll be here.

14 CHS: Should I go and take the money?

15 Saidakhmetov: Yes. Find out where he is and take
16 the money. [Unintelligible].

17 CHS answers phone.

18 CHS: Hello? Hi, yeah, termi -- We're in terminal
19 7. You should have turned right at the entrance, brother, uh,
20 instead of going straight. You should've turned right as soon
21 as you entered, uh -- there are signs, Ukraine Airlines.

22 Arrows. Are you coming then? Uh-huh, okay.

23 CHS hangs up.

24 CHS: Turns out he can't find us. I see him. He is
25 coming.

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Rivera - direct - Pravda

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1 Saidakhmetov: Should I go?

2 CHS: Yes, it is the guy.

3 Saidakhmetov: If he is bearded, it would have been
4 better if he didn't come.

5 CHS: Let him come and we'll see.

6 Kasimov: Hi.

7 CHS: Are you Dilkhayot? How are you?

8 Kasimov: Yes. Good, thanks. What happened,
9 brother?

10 CHS: Oh, well, there are -- is an issue with a
11 document. We are trying to solve it. We are almost done.

12 Kasimov: Are you working on it?

13 CHS: Yes, we are.

14 Saidakhmetov: When we were almost done [inaudible].

15 Kasimov: Hope you guys are okay. Well, let me give
16 you that thing. Let me give you the money now.

17 Saidakhmetov: I wish you put it inside an envelope
18 or something.

19 Kasimov: I almost didn't make it here.
20 [Unintelligible]. Let me wait in the car then just in case,
21 God willing.

22 Saidakhmetov: Sure, sure. Uh --

23 CHS: In case it doesn't work out, you will take us
24 back.

25 Kasimov: Yes, I will take you back if it doesn't

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Rivera - direct - Pravda

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1 work out.

2 Saidakhmetov: I'll give you a call in case, you
3 know.

4 Kasimov: Yes. That will work. To be honest, I
5 work from 6, uh, till 6, you know.

6 Saidakhmetov: Uh-huh.

7 Kasimov: I was tired and almost nodded off while
8 driving here, therefore, I am late a bit.

9 CHS: It is good you came as we were getting worried
10 in case it wouldn't work out. We didn't know what to do about
11 him going back.

12 Kasimov: In case it doesn't work out, God willing,
13 I will take you back.

14 Saidakhmetov: [Inaudible] I'm not sure, but there
15 is some kind of issue again.

16 Kasimov: Let me [unintelligible], the car and I
17 will be back, okay?

18 Saidakhmetov: Yeah, sure. [Pause]. They already
19 took the bags on to the plane. Right?

20 CHS: Right.

21 Q Now, Agent Rivera, could you continue reading please from
22 the time marked 3 hours, 53 minutes and 54 seconds into the
23 recording through the time marked 4 hours, 8 minutes and 20
24 seconds into the recording?

25 A Yes.

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Rivera - direct - Pravda

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1 CHS: Tired of waiting. I'm about to explode.

2 [Pause]. It is uncomfortable to stare at them, at someone
3 who's working, [indistinct airport announcement]. All three
4 of us are staring and getting stressed waiting to see when
5 they do it. [Coughs]. Are you from Tashkent, brother?

6 Kasimov: Yes.

7 CHS: Which part?

8 Kasimov: Chorsu.

9 CHS: Chorsu? I have been to Tashkent only twice.
10 It's been a while.

11 Kasimov: [Unintelligible].

12 CHS: We have tickets. Anyway, there will be more
13 waiting when we're inside.

14 Kasimov: If it takes off at 12:30, it will do it
15 about now.

16 CHS: [Unintelligible].

17 Kasimov: 12:10 [Unintelligible].

18 Saidakhmetov: I hope it won't. [Unintelligible].

19 CHS: We'll make it. [Pause]. They should do it
20 within five minutes. They are the ones keeping us waiting.

21 Kasimov: They will close the door 15 minutes before
22 departure.

23 Saidakhmetov: [Inaudible]. Why don't they just let
24 us go instead of keeping us here?

25 CHS: Should we wait for you once we're in Istanbul?

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Rivera - direct - Pravda

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1 Kasimov: What?

2 CHS: Should we wait for you?

3 Kasimov: God willing, brother.

4 Saidakhmetov: [Inaudible].

5 Kasimov: [Inaudible].

6 CHS: [Coughs] [Pause] Are you married?

7 Kasimov: No.

8 CHS: Then leaving should be easy. This brother
9 here is saying that we'll get married there. [Pause].

10 I know that it is possible to receive a Turkish visa
11 there at the airport, right? Now they're giving us a
12 headache, saying we have no visa. I told them it was possible
13 to get a visa there and that they should check it. Now, they
14 are doing that.

15 Saidakhmetov: Once I am there, in Turkey, could
16 there be any issues?

17 CHS: Once there, there are booths that you a visa.
18 If there is an issue, you will just head back in a flight
19 aboard a plane. [Sneezes]. That's impossible. [Pause]. We
20 will be late for...for the flight?

21 Unknown male: Yeah, I'm sorry. It's taking
22 forever, the documents, you know?

23 CHS: Yeah. He is saying it will be one, two
24 minutes.

25 Saidakhmetov: One, two minutes? Is it going to

MDL

RPR

CRR

CSR

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1 happen?

2 CHS: Yes, they are saying one, two minutes [Pause].

3 Did you leave your car in a parking lot?

4 Kasimov: Yeah [Unintelligible].

5 CHS: Hope they won't tow it.

6 AS and DK [inaudible].

7 CHS: You probably work a lot.

8 Kasimov: From six to six. Today, [Unintelligible],
9 return from work.

10 CHS: We troubled you today then. You will have to
11 go to work at 6 tomorrow then? How many hours will you sleep
12 today then?

13 Kasimov: We will see depending on when I get back,
14 [Unintelligible].

15 CHS: To a better work?

16 Kasimov: Yes, I'm in this job temporarily for a
17 couple of weeks.

18 CHS: What are you doing now?

19 Kasimov: I'm doing it temporarily.

20 CHS: A restaurant.

21 Kasimov: No, car service.

22 CHS: Car service? Oh, huh, I see.

23 Kasimov: God willing, I could start driving for
24 Uber starting next week.

25 CHS: For what?

MDL

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CSR

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1 Kasimov: Uber.

2 CHS: Uber?

3 Kasimov: There is new car service called Uber, a
4 taxi.

5 CHS: I see. Will you make more money there.

6 Kasimov: The hours work out better. Schedule is
7 better.

8 CHS: It has a better schedule?

9 Kasimov: You can choose hours that work for you and
10 rest at other times.

11 CHS: Does car service pay well?

12 Kasimov: Not so much with the current one. I have
13 to do it now to learn Manhattan streets better. Once I start
14 Uber, people say it should be better [Unintelligible].

15 CHS: You work in Manhattan mainly, right?

16 Kasimov: Yes.

17 CHS: You can't be hailed down; right?

18 Kasimov: No. It is through phone.

19 Saidakhmetov: [Inaudible].

20 CHS: [Unintelligible].

21 Unknown female one: You're good to go.

22 CHS: Oh, we're good to go. Oh, great.

23 CHS: Why? Is it yours?

24 Unknown female one: [Inaudible].

25 CHS: Someone's, I don't know. We are good.

MDL

RPR

CRR

CSR

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1 [Indistinct background chatter]

2 CHS: Thanks a lot brother for coming.

3 Kasimov: Have a good trip.

4 Saidakhmetov: God willing, [Unintelligible].

5 Kasimov: Bye, brothers.

6 CHS: See you later. May the peace, mercy, and the
7 blessings of Allah be with you too. What?

8 Q Agent Rivera, let me stop you there. The rest is the
9 transcript in the binder.

10 Agent Rivera, did you have any involvement in this
11 case?

12 A No.

13 Q In either the investigation or prosecution other than
14 reading these documents into evidence?

15 A No.

16 MR. PRAVDA: No further questions.

17 THE COURT: Your witness.

18 MR. ABRAHAM RUBERT-SCHEWEL: The defense has no
19 questions for this witness, Your Honor.

20 THE COURT: Thank you. You may step down.

21 (Witness steps down.)

22 THE COURT: Please call your next witness.

23

24 (Continued on next page.)

25

Ochilov - direct - Haggans

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1 (Continuing.)

2 MR. HAGGANS: The government calls Jamshid Ochilov.

3 THE COURTROOM DEPUTY: Raise your right hand, sir.

4 (Witness sworn/affirmed.)

5 THE COURT: Be seated and state and spell your name.

6 Pull the microphone to you and after you state and spell it,
7 counsel will inquire.

8 THE WITNESS: My name is Jamshid Ochilov,

9 J-A-M-S-H-I-D O-C-H-I-L-O-V.

10 **JAMSHID OCHILOV,**

11 called as a witness, having been duly

12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HAGGANS:

15 Q Good morning, sir.

16 A Good morning.

17 Q In what city and country were you born?

18 A Samarkand, Uzbekistan.

19 Q Could you spell Samarkand?

20 A S-A-M-A-R-K-A-N-D.

21 Q In what year were you born?

22 A 1984.

23 Q What language did you speak in your household growing up?

24 A Uzbek.

25 Q When did you first come to the United States?

Ochilov - direct - Haggans

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1 A 2004.

2 Q After coming to the United States have you continued to
3 speak Uzbek on occasion?

4 A Yes.

5 Q How frequently would you say you speak Uzbek in your
6 daily life?

7 A Every day.

8 Q When approximately did you begin to learn and speak
9 English?

10 A Late 1990s.

11 Q How far did you go to school in Uzbekistan?

12 A I finished high school and three years of college.

13 Q Have you attended any schooling in the United States?

14 A Yes, I did.

15 Q How far did you go in school in the United States?

16 A I earned my Bachelor's degree in the U.S.

17 Q Who is your current employer?

18 A Federal Bureau of Investigation.

19 Q What is your current title?

20 A Special Agent.

21 Q Since approximately when have you been a special agent?

22 A Since earlier this year.

23 Q Prior to becoming a special agent, did you also work for
24 the FBI?

25 A Yes, sir.

Ochilov - direct - Haggans

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1 Q What was your prior title for the FBI?

2 A Linguist.

3 Q Can you describe what you mean by the term "linguist" for
4 the FBI?

5 A It means I provided linguistic, language, support to the
6 FBI's ongoing cases involving the violations of U.S. law and I
7 provided language services in Uzbek and Turkish.

8 Q It's fair to say it's translation support; is that an
9 accurate summary?

10 A That is correct, sir.

11 Q Approximately how long were you a linguist for the FBI?

12 A A little over four years.

13 Q Were you a linguist for the FBI during the period of
14 early 2015?

15 A Yes, sir.

16 Q During your period of service as a linguist, did you
17 receive any specialized training to perform that job?

18 A Yes, sir.

19 Q Can you describe that in brief terms?

20 A I received various trainings to improve my translation
21 and interpretation skills and related analytical skills at
22 different times.

23 Q Can you give us a brief description of your duties over
24 the course of a day or week in support of an FBI case when
25 providing linguistic support?

Ochilov - direct - Haggans

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1 A So, during weekdays I provided translation and
2 interpretation services in Uzbek and Turkish languages.

3 Q Did that include in connection with criminal cases, sir?

4 A Involving various cases, sir.

5 Q How frequently did you provide those kinds of services
6 for the FBI?

7 A Every weekday.

8 Q Are you familiar with an investigation conducted by the
9 FBI involving an individual by the name of Dilkhayot Kasimov?

10 A Yes, I am.

11 Q Directing your attention to the late winter and early
12 spring of 2015, did you participate in the investigation in
13 some way during that period?

14 A Yes, sir.

15 Q Can you describe what the principal nature of your
16 participation was?

17 A I participated in an interview --

18 Q I'm sorry, withdrawn.

19 Did you provide linguistic support to the
20 investigation?

21 A Yes, sir.

22 Q In what language did you provide that linguistic support?

23 A Uzbek.

24 Q Did you review documents, communications, recordings and
25 other media in Uzbek in the course of your participation in

Ochilov - direct - Haggans

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1 the investigation?

2 A Yes, sir.

3 Q Did you translate those items into English on an
4 as-needed basis?

5 A That's correct, sir.

6 Q Did you also participate in a review of the contents of
7 certain devices that were associated with the defendant?

8 A Yes, sir.

9 Q Did that include review of various text-type or
10 messaging-type applications and their content?

11 A Yes, sir.

12 Q And, am I correct that you would translate Uzbek text
13 into English text based on those items?

14 A Yes, sir.

15 Q Did you review communications during that period of your
16 participation relating to an application called Viber on a
17 device belonging to the defendant?

18 A Yes, sir.

19 Q I will spell Viber, VIB, as in boy, E-R?

20 A Yes.

21 Q What was your practice if, during the course of your
22 review, you identified an information that might be relevant
23 to the investigation but was in Uzbek?

24 A I would review the material. I would translate it,
25 document it and relay information to the investigators.

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1 Q By "translate," do you mean translate into English?

2 A That is correct, sir.

3 Q And by "document," do you mean write it down in some
4 fashion?

5 A Yes.

6 MR. HAGGANS: Mr. Jackson, could I please have the
7 ELMO just for the witness?

8 BY MR. HAGGANS:

9 Q Sir, I am showing you a document that has been marked
10 Government Exhibit 43-b for identification. Have you seen
11 this document before?

12 A Yes, sir.

13 Q What is it?

14 A These are the messages exchanged between Mr. Kasimov and
15 another individual.

16 Q Can you please identify the name of the other individual
17 based on this document?

18 A Mahliyo.

19 Q Could you please spell that for the record?

20 A Mahliyo, M-A-H-L-I-Y-O.

21 Q This document appears to have some columns. Am I correct
22 that some of the columns contain material in Uzbek and other
23 of the columns contain material in English.

24 A Yes, sir.

25 Q With reference to the English-language columns, did you

Ochilov - direct - Haggans

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1 participate in the generation of those translations?

2 A Yes, I did.

3 Q Did the information reflected in this document in English
4 accurately reflect the translation support that you provided
5 during the course of this investigation as it relates to the
6 Uzbek messages reflected in this document?

7 A Yes, sir.

8 Q In preparing for your testimony today, have you reviewed
9 this document?

10 A Yes, I did.

11 Q Did you participate in its generation?

12 A Yes, I did.

13 Q Is this document a true and accurate summary of some of
14 the communications that you identified accompanied by
15 translations that you drafted during the period of your
16 participation in this investigation?

17 A Yes, sir.

18 Q Was the source of the communications reflected here one
19 of the defendant's electronic devices?

20 A Yes, sir.

21 MR. HAGGANS: Your Honor, I offer Government's
22 Exhibit 43-b into evidence.

23 THE COURT: Any objection?

24 MR. RUBERT-SCHEWEL: No, Your Honor.

25 THE COURT: It is admitted. You may publish it to

Ochilov - direct - Haggans

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1 the jury.

2 (Government's Exhibit 43-B received in evidence.)

3 (Exhibit published.)

4 MR. HAGGANS: Your Honor, if I could ask the court
5 to ask Mr. Jackson to dim the lights?

6 THE COURT: Yes.

7 Would you do that, Mr. Jackson?

8 THE COURTROOM DEPUTY: Yes, Judge.

9 THE COURT: Thank you.

10 BY MR. HAGGANS:

11 Q Sir, I just want to take a moment to orient us to the
12 content of this document. The column that I am pointing to
13 here on the left-hand side, is it fair to say that that's the
14 timestamp or the time that the communication was sent or
15 received?

16 A Yes, sir.

17 Q These two columns under the term or the name Mahliyo, is
18 it fair to say that those were the communications sent by that
19 user?

20 A Yes, sir.

21 Q And the two columns under the column titled Dilkhayot
22 Kasimov, is it fair to say that those were the communications
23 sent by that user?

24 A Yes, sir.

25 Q Could you please read into the record the portions of

Ochilov - direct - Haggans

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1 text beginning at the time stamp 10:16:28 p.m.? And with the
2 Court's permission I will read the portions attributed to the
3 other user, Mahliyo.

4 THE COURT: You have it. It's in evidence.

5 BY MR. HAGGANS:

6 Q Go ahead, SIR. And, for the record, I would ask you to
7 read the English-language portions.

8 THE COURT: Please.

9 A I got buddy let me give him your number. Try talking to
10 him.

11 Q No thank you. Not necessary.

12 A He can't take you to Saudi but still a great kid. Your
13 girlfriend's husband, Shohruh, also knows him.

14 MR. HAGGANS: With the Court's permission I ask
15 Mr. Jackson to give the Court Reporter a copy of Government
16 Exhibit 43-b for convenience.

17 THE COURT: Yes, that would be fine. Do you have an
18 extra copy?

19 MR. HAGGANS: I do, Your Honor.

20 BY MR. HAGGANS:

21 Q Continuing at 10:18:31. What is the point, neither do I
22 fall in love nor get used to someone that poor guy can
23 unintelligible. I won't anyone who lives here. There was a
24 thinker in Florida I said I wouldn't marry him if he wouldn't
25 go no one heard back from him he probably dropped dead or

Ochilov - direct - Haggans

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1 something, smiley teeth emoticon. Plus it would become more
2 obvious if/when I leave in 14 days (nerd) God willing so I
3 don't need any Problem.

4 A Okay. Is the one who you want in Saudi? I mean, that
5 guy.

6 Q I am still young. I don't want to end up killing my poor
7 groom. He won't endure it. Even my dad couldn't stand me for
8 a year when I wanted things my way. I am turning 19. I have
9 to learn how to cook. I will punch him if he tells me that my
10 mom didn't teach me how to cook. You see that is why you
11 shouldn't give my number out to anyone. You know my dad if
12 you want to get rid of me then do it but these dreams won't
13 come true any time soon. He's better off not writing to me.
14 I am having fun now this is much better.

15 A Not to Saudi. Would you go if it were Palestine or Gaza?

16 Q Yeah. The person I marry will go to fight in those
17 places you'll see we'll go together serious (laugh).

18 A Do you want a good advice? I would advise the same if it
19 were my own sister.

20 Q Sure, go ahead. Let it out of your system. Smiley teeth
21 emoticon, smiley teeth emoticon.

22 A A quick reminder first. I am not saying this because I
23 am still hopeful about you, because I no longer have any plans
24 for you this is an honest advice it's hard for someone who is
25 educated and pious to go to Saudi no matter what you wish the

Ochilov - direct - Haggans

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1 reason is that those pious ones are going to Gaza, Syria or at
2 least to Iraq.

3 Q One can go there only after getting education is a must
4 after obtaining an education one can go there.

5 A Then you should ask your person that you have feelings
6 for in Saudi in Egypt or wherever he is I don't know to come
7 here and take you along. Otherwise your problem is hard to
8 resolve. Education is not given a priority when jihad is
9 fardayn. You too are thinking like those fools in Saudi.
10 That is why Saudi is attracting you.

11 MR. HAGGANS: No further questions, Your Honor.

12 THE COURT: Your witness.

13 MR. HAGGANS: I apologize, Your Honor, one
14 additional question.

15 BY MR. HAGGANS:

16 Q Sir, what is the date of the messages reflected in this
17 document?

18 A August 19, 2014.

19 THE COURT: August what?

20 THE WITNESS: August 19 of 2014.

21 THE COURT: Anything else?

22 MR. HAGGANS: Nothing further questions, Your Honor.

23 THE COURT: You may examine.

24 MR. RUBERT-SCHEWEL: May I have one second, Your
25 Honor?

Ochilov - cross - Rubert-Schewel

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1 THE COURT: You may.

2 (Pause in proceedings.)

3 CROSS-EXAMINATION

4 BY MR. RUBERT-SCHEWEL:

5 Q Good morning, Mr. Ochilov.

6 A Good morning, Mr. Counsel.

7 Q You are employed as an FBI agent?

8 A Yes, sir.

9 Q With what division?

10 A With the Washington field office.

11 Q And are you with any specific unit?

12 A Counterterrorism, sir.

13 Q But you were previously employed by the FBI as a
14 translator or a linguist?

15 A That is correct, sir.

16 Q And you are testifying today in your capacity as a
17 translator or linguist?

18 A That would be correct to say.

19 Q And for this case you translated a number of documents?

20 A When I was a linguist, yes, sir.

21 Q And you actually translated the full conversation between
22 Mr. Kasimov and Mahliyo, the young lady?

23 A Are you referring to this specific chat, Mr. Counsel?

24 Q I am.

25 A Let me think about that for a second.

Ochilov - cross - Rubert-Schewel

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1 Q Would looking at the PDF of the original document refresh
2 your recollection?

3 A Yes, it would.

4 MR. RUBERT-SCHEWEL: Your Honor, permission to show
5 on the ELMO just to the witness the underlying conversation?

6 THE COURT: Yes, you may. Just to the witness.

7 BY MR. RUBERT-SCHEWEL:

8 A Mr. Counsel, I remember --

9 THE COURT: Sorry, he's asking you a specific
10 question. Does it refresh your recollection? Either the
11 answer is yes, and then counsel will inquire, or no. So does
12 it refresh your recollection?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. Next question.

15 BY MR. RUBERT-SCHEWEL:

16 Q And the entire conversation is actually much longer than
17 what is reflected in Government Exhibit 43-b; right?

18 A That is correct, sir.

19 Q And the conversation actually began -- sorry, on 43-b it
20 states that the conversation began at 10:16; right?

21 A I believe so.

22 MR. RUBERT-SCHEWEL: Your Honor, permission to
23 publish to the jury what is Government Exhibit 43-b already in
24 evidence.

25 THE COURT: You may publish it again to the jury and

Ochilov - cross - Rubert-Schewel

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1 to the witness as well.

2 (Exhibit published.)

3 MR. HAGGANS: Your Honor, could I have a brief
4 moment to discuss with defense counsel to see if a sidebar is
5 needed with reference to the document he showed the witness,
6 Your Honor, that is not in evidence?

7 THE COURT: Well, it refreshed his recollection.

8 So continue with your examination. I don't think
9 there's a need to have a sidebar here. Go ahead.

10 BY MR. RUBERT-SCHEWEL:

11 Q Sir, this is Government Exhibit 43-b; is that right?

12 A Yes, sir.

13 Q And this conversation started at 10:16, right, or this
14 excerpt of the conversation?

15 A Yes, sir.

16 Q But the document I previously showed you was the
17 beginning of the conversation and that part actually started
18 at 9:46 p.m.; right?

19 A I don't remember looking at that portion.

20 Q Would looking at that portion again refresh your
21 recollection of the time the conversation started?

22 A Yes, counsel.

23 MR. RUBERT-SCHEWEL: Your Honor, I'm now going to
24 show the witness what is the underlying document and I would
25 ask that the ELMO just be shown to the witness.

Ochilov - cross - Rubert-Schewel

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1 THE COURT: Yes.

2 BY MR. RUBERT-SCHEWEL:

3 Q Can you see the portion that I'm referring to?

4 A 9:46.

5 Q Does that indicate that the conversation began at 9:46
6 p.m.?

7 THE COURT: Well, the document is not evidence so
8 the question is does it refresh his recollection as to what
9 time the conversation started, yes or no.

10 Does it refresh your recollection?

11 THE WITNESS: Yes, it does.

12 THE COURT: With your recollection refreshed, what
13 is the answer to the question counsel has asked? What time
14 did it start? Again, this document is not in evidence. The
15 question is now that you've looked at it and your recollection
16 is refreshed, sir, what time did the conversation occur?

17 THE WITNESS: 9:46 p.m.

18 THE COURT: Okay. Continue.

19 BY MR. RUBERT-SCHEWEL:

20 Q So the exchange began approximately 30 minutes before the
21 excerpt on 43-b; right?

22 A Yes, sir.

23 Q And it contained many more text exchanges than the one in
24 43-b; right?

25 A Yes, sir.

Ochilov - cross - Rubert-Schewel

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1 Q And prior to what's in 43-b, there was a conversation
2 between Mr. Kasimov and Mahliyo asking about assistance with a
3 video editing project; right?

4 A I don't remember that specific portion, counsel.

5 Q Would looking at the underlying document refresh your
6 recollection?

7 A Yes, it would, sir.

8 MR. HAGGANS: Your Honor, could we have a brief
9 sidebar on this issue, please?

10 THE COURT: No, not in the middle of the
11 examination. He's asking to have his recollection refreshed.
12 There is no need for a sidebar.

13 BY MR. RUBERT-SCHEWEL:

14 Q Mr. Ochilov, I would just ask that you give me an
15 indication when you are done reviewing that.

16 MR. RUBERT-SCHEWEL: With the permission of the
17 Court.

18 THE COURT: Of course.

19 A (Reviewing.)

20 Counsel, I reviewed it.

21 Q Okay. And is your recollection refreshed?

22 A Sir, I didn't --

23 THE COURT: Is your recollection refreshed, yes or
24 no?

25 THE WITNESS: Yes, sir.

Ochilov - cross - Rubert-Schewel

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1 THE COURT: Next question.

2 BY MR. RUBERT-SCHEWEL:

3 Q And do you also recall that prior to what's in evidence
4 in 43-b much of the conversation was flirtatious or about
5 marriage?

6 A Yes, sir.

7 Q Can you explain to the jury -- one second. Withdrawn.

8 Mr. Ochilov, can you explain to the jury what an
9 emoji or an emoticon is?

10 A It's an expression of one's feelings.

11 Q Okay. And you translated this document, right, 43-b?

12 A Correct, sir.

13 Q And you reviewed it?

14 A Correct.

15 Q And --

16 MR. RUBERT-SCHEWEL: Your Honor, permission to
17 publish to the jury, 43-b.

18 THE COURT: You have it. It is in evidence.

19 (Exhibit published.)

20 BY MR. RUBERT-SCHEWEL:

21 Q And Mr. Ochilov, at 10:18:31 where you wrote smiley teeth
22 emoticon, that was actually reflected as a picture of a yellow
23 smiley face or an emoji; right?

24 A I believe so, Counsel.

25 MR. RUBERT-SCHEWEL: No further questions.

Ochilov - redirect - Haggans

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1 THE COURT: Your witness.

2 REDIRECT EXAMINATION

3 BY MR. HAGGANS:

4 Q I've placed 43-b on the ELM0.

5 (Exhibit published.)

6 Q You were asked some questions about timestamps. Do you
7 recall that testimony?

8 A Yes, sir.

9 Q In preparation of this document, do you recall whether or
10 not the time stamps were converted to the eastern time zone as
11 of that date reflected, August 19, 2014?

12 A Yes, sir.

13 Q Is it fair to say that the timestamps reflected here are
14 expressed, therefore, in local time?

15 A Correct, sir.

16 MR. HAGGANS: No further questions.

17 THE COURT: Anything else?

18 MR. RUBERT-SCHEWEL: No, Your Honor.

19 THE COURT: You may step down. You are done.

20 (Witness excused.)

21 THE COURT: Next witness, please.

22 MR. HAGGANS: Just one moment, Your Honor, please.

23 MR. KESSLER: Your Honor, at this point the
24 Government would like to read a stipulation. Your Honor, this
25 is a stipulation that's been marked Government Exhibit 205-a

Ochilov - redirect - Haggans

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1 and it has been signed by the Government and by counsel.

2 THE COURT: Any objection to 205-a being admitted
3 into evidence?

4 MR. RUBERT-SCHEWEL: No, Your Honor.

5 THE COURT: You may publish it to the jury as you
6 read it?

7 MR. KESSLER: Thank you. "It is hereby stipulated
8 and agreed, by and between the undersigned attorneys for the
9 Government and for the defendant, Dilkhayot Kasimov, that; 1.
10 If called as a witness at trial, an interpreter with expertise
11 in translating Uzbek to English would testify as follows: The
12 Government's exhibits listed in Column A of Attachment 1 to
13 the stipulation contains accurate Uzbek-to-English
14 translations of the Uzbek audio or written communication
15 identified in the corresponding row of Column B of Attachment
16 1. Each of the exhibits listed in Column A of Attachment 1
17 may be admitted as evidence as trial."

18 Moving to the second page: "This stipulation,
19 including Attachment 1, may be admitted as evidence at trial."
20 I will not read Attachment 1, but I am publishing each page to
21 the jury to show that there is a list of exhibits.

22 Your Honor, at this time -- actually Government
23 Exhibit 205-a is in evidence so I will withdraw that. All of
24 the exhibits in Attachment A are already in evidence with the
25 exception of 124-T-1, so I would also offer that in evidence

Ochilov - redirect - Haggans

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1 at this time.

2 THE COURT: Any objection?

3 MR. RUBERT-SCHEWEL: No, Your Honor.

4 THE COURT: It is admitted.

5 MR. KESSLER thank you.

6 THE COURT: You are welcome.

7 Please call your next witness.

8 MR. HAGGANS: For the Government's next witness we
9 will be setting up the laptop so we may need a moment to do
10 that, perhaps a ten-minute break here, Your Honor.

11 THE COURT: I think it's an opportune time for a
12 15-minute break. Do not talk about the case. We're getting
13 towards the conclusion so see you in 15 minutes.

14 (Jury exits.)

15 THE COURT: You may be seated. The jury has stepped
16 out. Any procedural issues we need to discuss in the absence
17 of the jury?

18 MR. PRAVDA: No, Your Honor.

19 THE COURT: Defense?

20 Ms. Macedonio. No, Your Honor.

21 THE COURT: Okay. Take 15.

22

23 (Continued on the following page.)

24

25

1 (In open court; outside the presence of the
2 defendant and the jury.)

3 THE COURT: Counsel, are we ready to resume the
4 trial?

5 MR. HAGGANS: We are, Your Honor.

6 THE COURT: Defense.

7 MS. MACEDONIO: Yes, Judge.

8 THE COURT: Mr. Jackson, would you let the jurors
9 know we are good to resume?

10 THE CLERK: Yes, sir.

11 (Defendant present.)

12 THE COURT: How many more witnesses do you
13 anticipate?

14 MR. HAGGANS: The government has two, Your Honor.

15 THE COURT: Thank you.

16 MR. HAGGANS: Your Honor, should we bring the
17 witness in?

18 THE COURT: Yes.

19 (Jury enters.)

20 THE COURT: Thank you, ladies and gentlemen of the
21 jury. I appreciate your promptness. Please be seated and we
22 will call our next witness.

23 MR. HAGGANS: The government calls Nehad Abusuneima.

24 THE COURT: Okay. Please bring the witness forward.

25 THE CLERK: Sir, come forward and I will swear you

1 in.

2 Please raise your right hand.

3 (The witness is duly sworn/affirmed by clerk.)

4 THE COURT: Please be seated, sir. I am going to
5 ask you to sit down and spell your name, state your name and
6 spell it for the court reporter and then counsel will inquire.

7 Speak right into that microphone, sir.

8 THE WITNESS: Okay. My name is Nehad, N-E-H-A-D,
9 and the last name is Abusuneima, A-B-U-S-U-N-E-I-M-A.

10 THE COURT: Thank you.

11 Counsel, you may inquire.

12 MR. HAGGANS: Thank you, Your Honor.

13 (Continued on next page.)

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Abusuneima - direct - Haggans

529

1 DIRECT EXAMINATION

2 BY MR. HAGGANS:

3 Q Sir, who do you work for?

4 A I work for the Federal Bureau of Investigation.

5 Q I think you may want to stay close to the microphone.

6 All right?

7 A Okay.

8 Q What is your title with the FBI?

9 A I'm a language specialist.

10 Q In what languages are you a specialist for the FBI?

11 A In Arabic and French.

12 Q Can you identify the city where you were born, sir?

13 A I was born in Beirut, Lebanon.

14 Q How long have you been speaking Arabic?

15 A Since my childhood.

16 Q Is it fair to say that was your household language
17 growing up?

18 A That's correct.

19 Q Do you continue to speak Arabic on a regular basis?

20 A Yes, sir.

21 Q Do you translate Arabic into English on a regular basis?

22 A Yes, sir.

23 Q How long have you been employed by the FBI as a language
24 specialist?

25 A Thirteen years.

Abusuneima - direct - Haggans

530

1 Q Can you give us a sense of the types of cases where
2 you've provided language specialist services?

3 A The cases that I worked on, criminal cases but most of
4 the cases is counterterrorism.

5 Q Can you define what you mean by the term
6 "counterterrorism" in brief terms?

7 A Counterterrorism was cases investigating terrorist
8 groups, terrorist individuals, individual who have intention
9 to harm our national security or to harm people. So those are
10 cases that I work on.

11 Q In the past several years, is it fair to say that your
12 focus has been counterterrorism cases?

13 A Yes, that's fair to say.

14 Q In the course of that work, have you become familiar with
15 an entity or organization commonly referred to as ISIS?

16 A Yes, sir.

17 Q Can you give us a brief description of what ISIS is?

18 A ISIS stands for Islamic State in Iraq and al-Sham.
19 That's a terrorist organization that surfaced on the
20 international level back in 2014. They've been known to be --

21 MS. MACEDONIO: Your Honor, I object to this line of
22 questioning.

23 THE COURT: Overruled. Go ahead.

24 A -- that known to be very aggressive, very violent group.

25 Q Thank you, sir.

Abusuneima - direct - Haggans

531

1 As part of your work as a language specialist for
2 the FBI, have you had occasion to engage and translate Arabic
3 language texts and media that relates to ISIS?

4 A Yes, sir.

5 Q Without identifying any particular investigation, can you
6 give us some description -- withdrawn.

7 Without identifying any particular investigation,
8 can you identify some examples of the types of ISIS related
9 texts and media that you've translated from Arabic into
10 English?

11 A Mainly the documents, video, chats, like, small clips
12 identifying the nature of their propaganda and the nature of
13 their actions.

14 Q In preparation for your testimony today, did you have
15 occasion to review three video clips?

16 A Yes, sir. Yes.

17 Q Were those video clips associated with WhatsApp?

18 A Yes, sir.

19 MR. HAGGANS: Your Honor, at this time, I'm going to
20 be publishing some video clips from Government Exhibit 41-B in
21 evidence.

22 THE COURT: "D" or "B"?

23 MR. HAGGANS: B, as in "boy," Your Honor.

24 THE COURT: Yes. It is already in evidence.

25 MR. HAGGANS: And I would ask that the lights be

Abusuneima - direct - Haggans

532

1 dimmed for that.

2 THE COURT: Mr. Jackson, please.

3 MR. HAGGANS: And, Mr. Jackson, if I can please have
4 the laptop podium.

5 Q I'm going to publish a video located on Government
6 Exhibit 41-B in evidence. The title of the video is VID --
7 that's Victor, India, David, dash, 20141206-WA0000.MP4,
8 recovered from Government Exhibit 40.

9 I'm sorry for the delay.

10 (Video played.) (Video stopped.)

11 Q Sir, what was the language being sung in the voiceover
12 portion of that video?

13 A It's the Arabic language.

14 Q There were subtitles on that video?

15 A Yes.

16 Q Did you create those subtitles?

17 A No, sir.

18 Q Is there any relationship between the voiceover audio and
19 the subtitles on this exhibit?

20 A The subtitles are the exact translation of the audio.

21 MR. HAGGANS: Could I have the laptop just for the
22 witness, please, Mr. Jackson.

23 Q Sir, on the screen, I'm showing you a document that's
24 been marked Government Exhibit 211.

25 A Yes.

Abusuneima - direct - Haggans

533

1 Q Is this a true and accurate screenshot of an image
2 contained in the video that we just watched --

3 A Yes, sir.

4 Q Please let me finish my question.

5 A I'm sorry.

6 Q That's all right.

7 Is this a true and accurate screenshot of an image
8 contained in the video we just watched, that is, the file on
9 Government Exhibit 41-B, Bravo, ending in WA0000.MP4?

10 A Yes.

11 MR. HAGGANS: Your Honor, I move to admit Government
12 Exhibit 211.

13 THE COURT: Any objection?

14 MS. MACEDONIO: No, Your Honor.

15 THE COURT: It's admitted. You may publish it to
16 the jury.

17 (Government Exhibit 211 so marked.)

18 Q Sir, looking at Government Exhibit 211, there appears to
19 be an image or a flag over the featured singer's shoulders.
20 Do you see that, sir?

21 A Yes, I do.

22 Q In the course of your work reviewing and translating ISIS
23 related media, have you come to become familiar with the flags
24 and insignia of ISIS?

25 A Yes.

Abusuneima - direct - Haggans

534

1 Q Do you recognize the flag depicted in this photograph?

2 A Yes.

3 Q What is it?

4 A That's the flag for ISIS.

5 MR. HAGGANS: Your Honor, I'm now going to publish a
6 video which is in evidence. It's located on Government
7 Exhibit 41-B recovered from Government Exhibit 40, the
8 defendant's phone. The title of the clip is VID, that's
9 Victor, India, David, dash, 20141206-WA0001.MP4.

10 THE COURT: You may publish. It's in evidence.

11 (Video played.) (Video stopped.)

12 Q Sir, what was the language being sung in the voiceover
13 portion of that video?

14 A It is the Arabic language.

15 Q Can you give us a summary of the content of the singing
16 portion?

17 A It is a song about, inspiring new recruits to join the
18 jihadi movement and to join the other people who are in the
19 land of caliphate. So it's mostly an inspirational song for
20 recruits, for new recruits about jihad.

21 Q You used the term "caliphate." In the course of your
22 work, what does the term "caliphate" refer to?

23 A Caliphate is the government system that all these jihadis
24 live under. It's a government system so it is taken from the
25 Islamic history and it is used by ISIS in the land they are

Abusuneima - direct - Haggans

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1 occupying.

2 MR. HAGGANS: Mr. Jackson, if I can have the laptop
3 just for the witness, please.

4 Q I'm showing you what have been marked for identification
5 as Government Exhibit 212 and Government Exhibit 213.

6 Have you seen these before, sir?

7 A Yes.

8 Q Do they represent true and accurate screenshots of images
9 contained within the video that we just watched, that is, the
10 file on Government Exhibit 41-B taken from the defendant's
11 phone, Government Exhibit 40, ending in WA0001.MP4?

12 A Yes.

13 MR. HAGGANS: Your Honor, I move admission of
14 Government Exhibits 212 and 213.

15 THE COURT: Any objection to 212?

16 MS. MACEDONIO: No, Your Honor.

17 THE COURT: It is admitted.

18 (Government Exhibit 212 so marked.)

19 THE COURT: Any objection to 213?

20 MS. MACEDONIO: No, Your Honor.

21 THE COURT: It is admitted. You may publish to the
22 jury.

23 (Government Exhibit 213 so marked.)

24 MR. HAGGANS: Thank you, Your Honor.

25 Q Sir, in that image over the featured individual's right

Abusuneima - direct - Haggans

536

1 shoulder, what does that vehicle appear to you to be?

2 A It's a tank.

3 THE COURT: And that's in 212, right?

4 MR. HAGGANS: Government Exhibit 212, Your Honor.

5 THE COURT: Right.

6 Q During the course of the video, there appear to be a
7 number of black flags, waving black flags at various portions.
8 Did you recognize those flags, sir?

9 A Yes.

10 Q What were those?

11 A Those are the flags of ISIS.

12 MR. HAGGANS: One moment, please.

13 THE COURT: Yes.

14 (Pause.)

15 Q I'm now moving to Government Exhibit 213. The vehicle on
16 the center of the image, sir, what does that appear to you to
17 be?

18 A It is a tank.

19 MR. HAGGANS: Your Honor, I'm now going to publish a
20 video clip in evidence. It's located on Government
21 Exhibit 41-B, as in boy. It is titled VID, that's Victor,
22 India, David, dash, 201412220WA0000.3G, as in golf, P, as in
23 papa.

24 THE COURT: You may publish it.

25 MR. HAGGANS: And just for the Court's attention,

Abusuneima - direct - Haggans

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1 during the video, I intend to pause at certain points and pose
2 some questions and I'll note those pauses on the record.

3 THE COURT: Thank you.

4 (Video played.) (Video stopped.)

5 MR. HAGGANS: For the record, I'm pausing at time
6 stamp 1 minute and 6 seconds.

7 Q Sir, I'm going to ask you a series of yes or no
8 questions.

9 In the course of that sequence, did you hear the
10 term "jihad"?

11 A Yes.

12 Q Could you spell that for the record, please?

13 A Jihad? That's J-I-H-A-D.

14 Q In the course of that recording, did you hear the term
15 "kufar"?

16 A No -- I'm sorry. Can I redact? Yes, I heard "kufar."

17 Q Are you sure, sir?

18 A I am sure.

19 Q Could you spell that term for the record, please?

20 A Kufar? That's K-U-F-A-R.

21 MR. HAGGANS: I'm going to resume the recording at
22 this time.

23 (Video played.) (Video stopped.)

24 MR. HAGGANS: For the record, I'm pausing the
25 recording at time stamp 1 minute and 54 seconds.

Abusuneima - direct - Haggans

538

1 Q Sir, did that appear to you to be a large explosion?

2 A Yes.

3 MR. HAGGANS: I'm resuming the video, Your Honor.

4 (Video played.) (Video stopped.)

5 Q Sir, what was the language, the principal language of
6 that video clip that we just played?

7 A It's the Arabic language.

8 Q Did you hear during the course of that video the phrase
9 "allahu akbar"?

10 A Yes.

11 Q Can you spell that?

12 A "Allahu" is A-L-L-A-H-U. "Akbar" would be A-K-B, as in
13 boy, A-R.

14 MR. HAGGANS: Could I have one moment, please,
15 Your Honor?

16 THE COURT: Yes, of course.

17 MR. HAGGANS: Thank you.

18 (Pause.)

19 MR. HAGGANS: Thank you, Your Honor.

20 Q Sir, the portion of the video, did you see a portion of
21 the video in which it appeared that there was a man sitting
22 behind a steering wheel?

23 A Yes.

24 Q Could you please give us a summary translation or gist of
25 what you understood that man to say?

Abusuneima - direct - Haggans

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1 A He was giving advice to his fellow human beings or fellow
2 mujahideens in this video to stick to the Qur'an and to be
3 loyal to the caliphate and encourage them to do martyrdom
4 attacks. According to him, that's the shortest way to heaven.

5 Q Did he use any term or terms in Arabic for the concept
6 that you just noted martyrdom attack?

7 A Yes.

8 Q What is that term in Arabic?

9 A "Shahada."

10 Q Can you spell that term for the record?

11 A S-H-A-H-A-D, as in David, A.

12 Q Is there a term in Arabic for an individual who conducts
13 or performs a "shahada"?

14 A Yes.

15 Q What is that term in Arabic?

16 A "Shaheed."

17 Q Could you spell that term for the record, sir?

18 A S-H-A-H-E, as in echo, E as in echo, D as in David.

19 MR. HAGGANS: Can I now please have the laptop just
20 for the witness, Mr. Jackson.

21 Q I'm showing the witness what has been marked for
22 identification as Government Exhibits 214 and 215.

23 Sir, the Government Exhibits 214 and 215 appear to
24 be true and accurate screenshots from the video that we just
25 reviewed?

Abusuneima - cross - Macedonio

540

1 A Yes.

2 MR. HAGGANS: Your Honor, I move to admit Government
3 Exhibits 214 and 215.

4 THE COURT: Any objection to 214?

5 MS. MACEDONIO: No, Your Honor.

6 THE COURT: It's admitted.

7 (Government Exhibit 214 so marked.)

8 THE COURT: Any objection to 215?

9 MS. MACEDONIO: No, Your Honor.

10 THE COURT: It's admitted.

11 (Government Exhibit 215 so marked.)

12 MR. HAGGANS: If I can have just one moment.

13 THE COURT: Yes.

14 (Pause.)

15 MR. HAGGANS: I have no further questions,
16 Your Honor.

17 THE COURT: You may cross.

18 CROSS-EXAMINATION

19 BY MS. MACEDONIO:

20 Q Good afternoon.

21 A Good afternoon.

22 Q You testified on direct examination that you are an
23 Arabic interpreter, is that correct?

24 A Correct.

25 Q And you work for the FBI, correct?

Abusuneima - cross - Macedonio

541

1 A Correct.

2 Q Would it be fair to say that there's a difference between
3 the Arabic language and the Uzbek language?

4 A Yes.

5 Q In fact, they're two completely different languages,
6 correct?

7 A Correct.

8 Q Do they even have a different alphabet?

9 A I believe so.

10 Q Do you speak -- you speak Arabic, right?

11 A Right.

12 Q But do you speak Uzbek?

13 A No.

14 MS. MACEDONIO: Thank you, Your Honor. No further
15 questions.

16 THE COURT: Anything else?

17 MR. HAGGANS: No.

18 THE COURT: You may step down. Thank you.

19 (Witness excused.)

20 THE COURT: Please call your next witness.

21 MR. HAGGANS: The witness government recalls Lorenzo
22 Vidino.

23 THE COURT: Please step up, Doctor. I remind you
24 you are still under oath.

25 (Witness recalled; previously sworn.)

Vidino

542

1 THE COURT: I'm going to ask you have you spoken
2 about your testimony with anyone since you left the witness
3 stand?

4 THE WITNESS: No.

5 THE COURT: The answer to that question is no.
6 Go ahead.

7 MR. HAGGANS: Your Honor, I think I should make
8 clear, I want to make sure I understand Your Honor's question.
9 Was Your Honor referring to the witness' prior testimony?

10 THE COURT: Did you understand my question?
11 When you left this witness stand, have you spoken
12 with anyone about any of your testimony, whether this past
13 testimony or the testimony you're about to give now?

14 THE WITNESS: Neither.

15 THE COURT: Have you spoken with the U.S. Attorney's
16 Office at all since leaving the stand?

17 THE WITNESS: I have spoken.

18 THE COURT: You have spoken to them?

19 THE WITNESS: Yes.

20 THE COURT: What did you talk to them?

21 THE WITNESS: About me coming back, the logistics of
22 traveling.

23 THE COURT: Other than the logistics of coming back
24 and the fact that you were going to come back, did you talk in
25 any way, shape and form about the substance of what you are

CMH

OCR

RMR

CRR

FCRR

Vidino

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1 going to be asked and what you anticipate your answers to be
2 now at all?

3 THE WITNESS: I was provided with the three videos.

4 THE COURT: You were what?

5 THE WITNESS: I was provided with the three videos.

6 THE COURT: You were provided with three videos?

7 Okay. If you are shown those videos, I would like you to
8 identify those videos as videos you were shown and if you were
9 not shown those videos, I am sure defense counsel will ask you
10 what those videos were.

11 So, anything other than being provided with the
12 three videos?

13 THE WITNESS: No.

14 THE COURT: Did you discuss your testimony about
15 those three videos with the government?

16 THE WITNESS: Yes.

17 THE COURT: Okay. What did you say to them or what
18 did they say to you about the videos?

19 THE WITNESS: Whether I identified the videos --

20 THE COURT: I'm sorry?

21 THE WITNESS: Whether I identified the videos as,
22 what my opinion of the videos was, whether I identify them as
23 ISIS videos.

24 THE COURT: What did you say to the government about
25 that?

CMH

OCR

RMR

CRR

FCRR

Vidino - direct - Haggans

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1 THE WITNESS: I did.

2 THE COURT: You said they were ISIS videos?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Other than those three videos and
5 the fact that you said they are ISIS videos, anything else?

6 THE WITNESS: No.

7 THE COURT: Okay. Your witness.

8 DIRECT EXAMINATION

9 BY MR. HAGGANS:

10 Q So since you've testified in this case, you reviewed
11 three videos, is that correct?

12 A Correct.

13 Q Before I address the videos, are you aware of any
14 relationship between the country of Saudi Arabia and ISIS?

15 A There's I would say animosity between the two.

16 Q It's a hostile relationship?

17 A Absolutely.

18 MR. HAGGANS: Your Honor, I'm now --

19 THE COURT: Microphone, sir.

20 MR. HAGGANS: I'm sorry. Your Honor, I'm now going
21 to display Government Exhibit 211 which is in evidence.

22 THE COURT: You may publish it to the witness and
23 the jury.

24 THE CLERK: Laptop podium?

25 MR. HAGGANS: I'm sorry. It's on the laptop and if

Vidino - direct - Haggans

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1 you can please dim the lights.

2 Q Dr. Vidino, does this screenshot appear in one of the
3 videos that you reviewed?

4 A Yes, it does.

5 Q Are you familiar in the course of your work with ISIS'
6 insignia and flags?

7 A Yes.

8 Q There appears to be a flag or flags in this video behind
9 the featured speakers, behind the featured speaker?

10 A Yes.

11 Q Did you identify that flag?

12 A That's the ISIS flag.

13 Q Having reviewed this video prior to your testimony and
14 based on your work and research in this area, do you have any
15 opinions on the purpose of this video as it relates to ISIS?

16 A This is quintessential, pure ISIS propaganda video.

17 Q What's the basis of your opinion?

18 A It matches with the countless videos that ISIS has
19 produced. It has -- it was produced by ISIS. It has the
20 logos of ISIS. It has the language of ISIS. It has the
21 flags. It was produced by one of the media companies of ISIS.
22 It is an ISIS video.

23 Q Do you recall seeing subtitles when you reviewed this
24 video?

25 A Yes.

Vidino - direct - Haggans

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1 Q Do you recall seeing a subtitle that appeared to identify
2 the individual who's the principal speaker?

3 A Yes.

4 Q Was the content of that subtitle Commander Abu, that's
5 A-B-U, Usamah, U-S-A-M, as in Michael, A-H, al-Maghribi,
6 that's al-Maghribi, was that the name featured in the
7 subtitle?

8 A Yes, it was.

9 Q Are you familiar with the term "kunya"?

10 A Yes.

11 Q What is a "kunya"?

12 A "Kunya" in Arabic is an alias.

13 Q And prior to -- I'm sorry. Withdrawn.

14 Are you aware of any relationship, current or
15 historical, between Abu Usamah al-Maghribi and ISIS?

16 A He's a fairly known -- he was a fairly known commander
17 within ISIS.

18 Q Is it fair to say that Abu Usamah al-Maghribi is a
19 "kunya" or alias?

20 A Yes, absolutely.

21 MR. HAGGANS: Your Honor, I'm now going to display
22 Government Exhibits 212 and 213 which are in evidence.

23 THE COURT: You may publish.

24 Q Dr. Vidino, are these screenshots drawn from one of the
25 video files that you reviewed?

Vidino - direct - Haggans

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1 A Yes.

2 Q This video file, the video file that contains these
3 screenshots, do you know what, do you, have you -- I'm sorry.
4 Withdrawn.

5 The video containing these screenshots, do you have
6 any opinions about the purpose of this video as it relates to
7 ISIS?

8 A This is an ISIS propaganda video.

9 Q Do you know if this video was distributed by ISIS?

10 A Yes, it was.

11 Q Do you know if it was distributed by any particular
12 entity or arm associated with ISIS?

13 A I believe it was by Al Hayat.

14 Q Are you familiar with an entity or associate of ISIS by
15 the name of Al-Furqan Establishment for Media Production?

16 A Yes.

17 Q Is there any relationship between that entity and this
18 video to your knowledge?

19 A Al-Furqan is one of the media producing companies for
20 ISIS.

21 MR. HAGGANS: I'm now going to, with Mr. Jackson's
22 assistance, please display on the ELMO Government Exhibit 38-C
23 which is in evidence.

24 THE COURT: You may publish.

25 Q With reference to the text that I'm pointing to on

Vidino - direct - Haggans

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1 Government Exhibit 38-C, beginning there, can you read that
2 into record up to the semicolon?

3 A From the top?

4 Q No, starting from --

5 A Sorry. "Also known as Al-Furqan Establishment for Media
6 Production."

7 Q And just for the record, 38-C is one of the portions of
8 the Federal Register relating to the designation of ISIS as a
9 foreign terrorist organization, is that correct?

10 A Correct.

11 MR. HAGGANS: I'm now going to display the
12 screenshots, Government Exhibit 214 and 215 which are in
13 evidence.

14 THE COURT: Any objection? They're in evidence.

15 MS. MACEDONIO: They're in evidence. No objection.

16 MR. HAGGANS: From the laptop, Mr. Jackson.

17 (Continued on next page.)
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Vidino - direct - Haggans

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1 DIRECT EXAMINATION (Continuing)

2 BY MR. HAGGANS:

3 Q Dr. Vidino, do these screen shots, Government Exhibit 214
4 and 215, do they come from one of the video files that you
5 reviewed?

6 A Yes.

7 Q Based on your review of that video and your work in this
8 field, have you formed any opinions about the purpose of this
9 video as it relates to ISIS?

10 A They're propaganda videos, in this case, showing a
11 suicide bombing, which is one of the most difficult propaganda
12 showing military operations by ISIS.

13 Q Are you familiar with the term shaheed?

14 A Yes.

15 Q What does that term mean anything in relation to this
16 video?

17 A A shaheed used by ISIS in this context is somebody who
18 dies in a military operation, dies fighting.

19 Q Would ISIS consider an attack like the one depicted in
20 this video to be a military attack?

21 A Most definitely.

22 Q I believe in your earlier testimony you addressed the
23 term kafir. Do you recall that testimony?

24 A Yes.

25 Q Are you familiar with the term kuffar?

MDL

RPR

CRR

CSR

Vidino - direct - Haggans

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1 A Kuffar is the plural of kafir, same word. They both mean
2 infidel. One is singular; one is plural.

3 Q In this video, when you reviewed it, do you recall the
4 portion towards the second half of the -- pardon me, towards
5 the middle of the video that is depicted here in Government
6 Exhibit 215, do you recall whether the term or phrase Allahu
7 Akbar was used during that portion?

8 A Yes, it was.

9 Q You are familiar with the meaning of that phrase?

10 A Yes.

11 Q Does that phrase have, in certain context, a benign
12 meaning?

13 A Of course, yes.

14 Q What is the translation of that phrase?

15 A God is the greatest.

16 Q Does that phrase have equivalents in other languages and
17 religions?

18 A Yes.

19 Q Do you recall your prior testimony to the effect that
20 certain terms and their usage, their meaning depends upon the
21 context?

22 A Yes.

23 Q What was the context of the usage of the term of Allahu
24 Akbar in the portion of the video that is depicted as
25 Government Exhibit 215?

Vidino - cross - Macedonio

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1 A It's celebratory here. It's celebrating something
2 positive, the attack.

3 MR. HAGGANS: I have no further questions, Your
4 Honor.

5 THE COURT: Your witness.

6 CROSS EXAMINATION

7 BY MS. MACEDONIO:

8 Q Dr. Vidino, welcome back.

9 A Thank you.

10 Q You testified on your direct examination today that the
11 videos that have been entered into evidence by the Government
12 that you recently reviewed are quintessential ISIS propaganda;
13 correct?

14 A Correct.

15 Q Now, before your testimony earlier in the week, had the
16 Government given you these videos to look at?

17 A No.

18 Q Okay. So when you were preparing to come and testify
19 earlier in the week, they hadn't given you these videos, they
20 had only given you these videos after you had completed your
21 testimony here earlier in the week; correct?

22 A Correct.

23 Q I think you were here on Tuesday; is that right? Maybe
24 Wednesday?

25 A I don't remember.

MDL

RPR

CRR

CSR

Vidino - cross - Macedonio

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1 Q So it wasn't until after that that you were asked to
2 review these videos; correct?

3 A Correct.

4 Q Now, you testified on direct examination here today that
5 there were countless ISIS videos; is that correct?

6 A Correct.

7 Q Okay. So, when you use the term countless, can you put a
8 number on that?

9 A Thousands.

10 Q Thousands upon thousands?

11 A Yeah.

12 Q Okay. And those videos are sent out by various
13 distributors on behalf of ISIS; is that fair to say?

14 A Yes.

15 Q And then those videos can be re-distributed from one
16 individual to another; correct?

17 A Yes.

18 Q So you don't have to have direct contact with a
19 particular distributor to be able to get one of these ISIS
20 videos; right?

21 A That's correct.

22 Q And is it fair to say, Dr. Vidino, that you yourself have
23 viewed thousands of ISIS propaganda videos?

24 A Correct.

25 Q Now, it doesn't mean that because you've viewed these

Vidino - cross - Macedonio

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1 videos that you subscribe to what's in them; right?

2 A Of course.

3 Q Okay. And, in fact, you don't subscribe to what's in
4 them at all?

5 A No.

6 Q Despite the fact that you have viewed thousands of them,
7 fair to say?

8 A Correct.

9 Q In your body of work, would it be fair to say that a
10 person who subscribes to ISIS who receives this propaganda
11 would redistribute it so that he or she could entice others to
12 join ISIS as well?

13 A Some would; some wouldn't. I would say not necessarily.
14 It wouldn't be unusual, but it's not a given.

15 Q You were asked about a term. I'm going to say the
16 English, God is the greatest. Are you familiar with that
17 term?

18 A Allahu Akbar.

19 Q Thank you. And is it correct, Dr. Vidino, that Muslims
20 use this five times a day when they're calling for prayer?

21 A Yes.

22 Q Because Muslims pray five times a day?

23 A If they are pious, yes.

24 Q How about the term -- I'm going to spell it
25 S-H-A-H-E-E-D?

MDL

RPR

CRR

CSR

Vidino - cross - Macedonio

554

1 A Shaheed.

2 Q Shaheed. And what are the various meanings of shaheed?

3 A Shaheed means to bear witness. So it's to testify that
4 you believe in God. As for the terms we've been discussing
5 over the last few days, there's, I would say, a mainstream
6 meaning within Islam and then a certain separate and less
7 benign meaning that ISIS uses.

8 Shaheed is commonly known as a martyr, someone who
9 dies fighting jihad.

10 Q It's fair to say that it has multiple meanings?

11 A Yes.

12 Q One of them, at least one of them which is benign, right?

13 A Yes.

14 Q You testified, when you were here earlier in the week,
15 that you have been given north of \$10,000 for your testimony,
16 fair to say?

17 A I haven't been given it yet.

18 Q Well, you are expected to be paid?

19 A Expected to be paid, yes.

20 Q Is it fair to say that the Government calling you back
21 today caused that to go a little further north, Dr. Vidino?

22 A We haven't discussed that yet.

23 Q You charge by the hour; right?

24 A Yes.

25 Q And you came from Washington, D.C.?

Proceedings

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1 A I did.

2 Q And, so, you get to bill for your travel; right?

3 A Yes.

4 Q And you get to bill for the time you're sitting in the
5 hallway waiting to be called?

6 A Yes.

7 Q So it's fair to say it's going further north; correct?

8 A Yes.

9 MS. MACEDONIO: I have no further questions.

10 THE COURT: Your witness.

11 MR. HAGGANS: I have no redirect, Your Honor.

12 THE COURT: You may step down. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: Please call your next witness.

15 MR. PRAVDA: Your Honor, the Government rests.

16 THE COURT: The Government rests and that means,
17 ladies and gentleman, that it is now time for your lunch. It
18 is about ten minutes to 1:00. Why don't we resume at, let's
19 say, 2:10. Thank you. Please don't talk about the case yet.
20 We are not done. But as I said to you earlier today, we're
21 getting close. So, thank you.

22 (Jury exits the courtroom.)

23 THE COURT: You may be seated. The jury has left
24 the courtroom.

25 Do we have any motions?

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1 MS. MACEDONIO: Yes, Your Honor with the Court's
2 indulgence, it seems that might be productive if we were able
3 to have another ex-parte conference. There are some
4 additional matters that have arisen. We have discussed this
5 with the attorneys.

6 THE COURT: We can do that, but we can do that after
7 we have any motions and we will take our luncheon break and
8 the Court will take its comfort break. Let's see if there are
9 any motions first.

10 MS. SHARKEY: Sure, Judge. Pursuant to Rule 29, we
11 request that the Court find that the Government's case was
12 insufficient.

13 THE COURT: Any response to that?

14 MR. PRAVDA: Yes, Your Honor. The Government
15 believes that the evidence presented in this case, including
16 evidence that the defendant traveling to JFK Airport to meet
17 with Mr. Saidakhmetov contributing his own money to Mr.
18 Saidakhmetov knowing that Mr. Saidakhmetov was going to be
19 traveling to Turkey and then to Syria to join ISIS, evidence
20 that the defendant had ISIS propaganda on his phone, all of
21 that is more than sufficient to allow the jury to deliberate
22 on the question of whether the defendant is guilty beyond a
23 reasonable doubt of crime charged, conspiracy to provide
24 material support to ISIS and attempt to provide material
25 support to ISIS.

Proceedings

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1 THE COURT: Any response from defense?

2 MS. MACEDONIO: We respectfully disagree with the
3 Government and we assert that the Government has failed to
4 prove its case beyond a reasonable doubt and, therefore, we
5 ask the Court to dismiss the charges.

6 THE COURT: Any response from the Government?

7 MR. PRAVDA: Yes, Your Honor. Just briefly, the
8 Court only has to find that there is sufficient evidence for
9 the case to be presented to the jury at this stage, not that
10 the Government has failed to prove its case beyond a
11 reasonable doubt.

12 THE COURT: Any response from the defense?

13 MS. MACEDONIO: No, Your Honor.

14 THE COURT: The motion of defense is denied. We
15 will now take our luncheon break and when we resume, we will
16 have whatever initial applications we have, either ex-parte or
17 otherwise from either counsel. Enjoy your lunch.

18 Why don't we plan to be back here at two minutes
19 before 2 o'clock if that works for everybody.

20 MS. SHARKEY: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. PRAVDA: Thank you, Your Honor.

23 MS. MACEDONIO: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Continued on following page with afternoon session.)

Proceedings

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1 AFTERNOON SESSION

2 (In open court; outside the presence of the jury.)

3 THE COURTROOM DEPUTY: All rise. Judge Kuntz
4 presiding.

5 THE COURT: We are waiting for the defendant to be
6 produced.

7 You may be seated, everyone. Can we have
8 appearances?

9 MR. PRAVDA: Doug Pravda.

10 THE COURT: No, we have appearances.

11 MR. PRAVDA: Sorry, Your Honor. The realtime said
12 can we have appearances.

13 (Defendant present.)

14 MS. SHARKEY: Your Honor, we have a new interpreter
15 this afternoon.

16 THE COURT: Hello. I am going to ask you, ma'am, to
17 state your name as the interpreter on the record and then we
18 will swear you as interpreter. Okay. Would you sit down and
19 state your name into the microphone and spell it for the court
20 reporter.

21 THE INTERPRETER: Dilafurz Karimova.

22 THE COURT: Ma'am, you have to spell that.

23 THE INTERPRETER: D-I-L-A-F-R-U-Z. K-A-R-I-M-O-V-A.

24 THE COURT: Thank you. And you are a Uzbek
25 interpreter?

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1 THE INTERPRETER: Yes.

2 THE COURT: Have you previously been sworn in
3 Federal Court?

4 THE INTERPRETER: This is first time.

5 THE COURT: First time. Well, Mr. Jackson will give
6 you the oath. We love to have first-time customers. Please
7 stand up and raise your right hand.

8 (Interpreter sworn.)

9 THE COURT: Thank you. You may be seated, ma'am,
10 and welcome. You are no longer a first-timer. Okay.

11 Now, do we have any applications before we bring the
12 jury in from either side?

13 MS. MACEDONIO: Your Honor, we had made an
14 application earlier to have an ex-parte conference. We think
15 this would be the appropriate time to do that.

16 THE COURT: All right. I take it the Government
17 agrees with that.

18 MR. PRAVDA: No objection, Your Honor.

19 THE COURT: No objection. I am going to ask the
20 Government and the public and everybody else, other than
21 defense counsel and the defendant and obviously the Court
22 security folks, to leave the courtroom now. We will get you
23 back in a few minutes. Don't go far. This won't take long.

24 MR. PRAVDA: Your Honor, I would just remind the
25 Court again about the realtime.

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1 THE COURT: I get it.

2 MR. PRAVDA: Thank you.

3 THE COURT: I am a slow learner but not that slow.

4 (Continued on next page.)

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Sealed by Order of the Court

561

1 (The following portion is sealed by Order of the
2 Court.)

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Sealed by Order of the Court

562

1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]

Sealed by Order of the Court

563

1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]

Sealed by Order of the Court

564

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(End of sealed ex-parte portion of the record.)

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(Continued on next page.)

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1 (Continuing.)

2 THE COURT: Please come in and please restore
3 realtime, Madam Reporters.

4 All right. We have had an agreed-upon, or at least
5 not objected to, ex parte conference with defense counsel and
6 defense counsel has an application to make with respect and I
7 would like them to make it on the record and in the presence
8 of the prosecution with respect to the timing of the trial, to
9 put it generically.

10 MS. MACEDONIO: Your Honor, it is the defense
11 application that we adjourn for today and continue the trial
12 on Monday.

13 THE COURT: What is the Government's response to
14 that application?

15 MR. PRAVDA: May we have one moment to consult?

16 THE COURT: You may have two moments.

17 (Pause in proceedings.)

18 MR. PRAVDA: Your Honor, the Government did not have
19 an objection, but wants to make sure that we are clear that,
20 is the defendant resting today or is the application of the
21 defendant to potentially come back and put a case on Monday?

22 THE COURT: The answer to the question as posed is
23 yes. In other words, we are where we are. We have had the
24 Government rest.

25 MR. PRAVDA: Yes.

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1 THE COURT: There was a motion to dismiss the
2 Government's case. That motion was denied and we are now at a
3 point where the defense will or will not put on a case and
4 they will advise the Court and the prosecution of their
5 decision with respect to either put on a case or to rest on
6 Monday morning at 9:30.

7 I would remind all parties that there was a request
8 by this old Wall Street guy who has taken depositions until 2
9 in the morning, to allow you to have the weekend to prepare
10 summations and to have the jury charge conference; although, I
11 also told you that we have the proposed jury instructions for
12 your review and we can do this, as one fellow I used to
13 practice with used to say, the hard way or the easy way. We
14 can adjourn until Monday morning at 9:30 as defense has
15 requested and they will advise us at that time if they want to
16 put on a case or not or I could force them to tell us now
17 whether they're going to put on a case or not and I can force
18 the parties to sum up, even before the charge conference and
19 then I can give you the jury charge after I force you to sum
20 up, the way some old school judges have done, and then I can
21 give the jury charge to the jury on Monday morning.

22 So, in light of that, do you have any objection to
23 their request?

24 MR. PRAVDA: We still have no objection, Your Honor,
25 and thank you for that clarification.

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1 THE COURT: I like to be as clear as I can be. So,
2 why don't we get the jury back and we will tell them the
3 parties have agreed to adjourn today and we will resume on
4 Monday at 9:30 a.m. and I will admonish them not to discuss
5 the case. Then I will ask counsel to sit tight because we
6 have a gift bag, a treat bag as my kids used to say, to take
7 home with you. Do we have their gifts in the courtroom?

8 (Jury enters.)

9 THE COURT: Ladies and gentlemen of the jury, I
10 thank you for your patience yet again and remember when I said
11 that I would send you home at 5 o'clock, the good news is that
12 I am going to violate that by saying we are adjourned for the
13 day right now. I know that feeling. It's like a snow day
14 when I was a little kid. We will resume on Monday morning at
15 9:30, but I want you to know that your presence and your being
16 here means everything to us and we are so appreciative of it.
17 We will see you Monday at 9:30. Do not talk with anyone about
18 the case or read anything about the case.

19 Just think about how we have one team in the
20 playoffs, maybe two teams, and if you have any friends in
21 Boston say a big smiling judge said, take that, Boston. Aside
22 from that, we are adjourned. I want to thank you for your
23 continued service. We will see you Monday morning. We are
24 adjourned for the day and for the weekend. I was going to say
25 class dismissed.

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1 (Jury exits.)

2 THE COURT: A very happy jury has left the
3 courtroom. Be seated and now, as promised, we have your
4 homework assignments. My law clerks and I, and I put it in
5 that order, but they're the ones that did the heavy lifting
6 with the drafts. If there's anything wrong, it's on me. We
7 have the drafts, jury charge and verdict forms to take home
8 with you.

9 The way we do this is pretty straight forward. We
10 have what has been marked as Court Exhibit 1, the jury charge,
11 and then we will have Court Exhibit 2, the verdict-reached
12 form. The reason I have that innovation is because perhaps in
13 half of the cases that I have handled as a judge, despite the
14 instruction to wait until the verdict has been reached not to
15 hand out the verdict form, the folks hand out the verdict form
16 and send it back in and say, no, you've got to bring it in
17 when you come out so this is a form that says to the Court, we
18 have reached a decision and then we have Court Exhibit 3 which
19 is the verdict sheet itself and we are going to bring those,
20 Court 2 and Court 3, out to you in addition to Court 1 which
21 my law clerk has just given you.

22 The way we will proceed on Monday is we will go page
23 by page and I will ask if there are any objections to anything
24 contained on page one and I will start with the Government and
25 you will say yes or no and then you will say what your

1 objection is to page one and I will turn to the defense and I
2 will ask what your objection is and I will rule on the
3 objections page by page as we go through the jury charge and
4 so that is how we will proceed.

5 If I accept the proposed changes, if any, I will
6 note the changes and make them. And if I reject proposed
7 changes, you have your objection preserved for the record.
8 You don't have to say I object on to the record. You object
9 and it's preserved for the record and then we go to page 2.
10 And go page-by-page asking the Government first and then
11 defense counsel. This is not a collective drafting exercise.
12 I know how brilliant all the lawyers are around the table. I
13 get that.

14 This is your opportunity to object to something in
15 the charge. I am always willing to listen to what lawyers
16 have to say about a better way to write it, but, remember, if
17 you think I loved Dearie and Korman and Johnson, I loved the
18 late Judge Sand and Mr. Siffert is a friend of mine so when
19 you see references that look like they come from Sand, it's
20 because for the most part, they do.

21 We are now going to give you the,
22 jury-has-reached-its-decision form and the jury verdict form.
23 That is to say, Court 2 and Court 3 for your review and for
24 your comments. Honestly we will go page-by-page Monday on the
25 record so feel free to be prepared to do that. In the event

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1 that there is something that you wish to discuss with your
2 adversaries in cyberspace over the weekend where there is
3 something that each of you finds is problematic, whether it's
4 on page 15 and you want to make a joint application to modify
5 something on page 15 or 27 or anything else, feel free to do
6 that. You can do it either before the conference by filing it
7 on ECF or you can wait for the conference. I am not
8 suggesting that you do that because we have spent a lot of
9 time and effort obviously in getting these drafts done for
10 your review, but we want you to take your time doing it but if
11 there is something that you feel you want to make a joint
12 proposal in advance, feel free to do it.

13 Once I have gotten your changes your suggested
14 changes, we will have a final iteration of the jury charge
15 which we will give to you as soon as we can. And then we will
16 have the defense case. If they put on a case and then we will
17 have summations. The Government will go first, then the
18 defendant, then there will be rebuttal and then the jury
19 charge and then will jury will have the case. That's as
20 traditional as one can get in a criminal trial. Questions?
21 Comments?

22 MR. PRAVDA: Your Honor, if there is a defense case
23 on Monday, would the -- would the charge conference be
24 following the defense case?

25 THE COURT: Yes.

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1 MR. PRAVDA: And if there is no defense case we'll
2 just proceed with the charge conference at 9:30 on Monday?

3 THE COURT: Yes.

4 MR. PRAVDA: Okay, thank you.

5 THE COURT: Unless there is something else we need
6 to do.

7 MR. PRAVDA: Not for us.

8 THE COURT: Does that work for defense counsel as a
9 procedure?

10 MS. MACEDONIO: Yes, Your Honor.

11 THE COURT: Is there anything else we need to
12 discuss today?

13 MR. HAGGANS: Your Honor, we are going to put it in
14 the 124-T-1 exhibit. It is in evidence and at the conclusion
15 of the proceeding we are just going to replace it in the
16 jurors' binders.

17 THE COURT: I have asked you not to take anything
18 out of the jurors' binders that was in evidence. So you can
19 just add to it, all right? Do it that way rather than --
20 because what will inevitably happen, no disrespect to your
21 third grade skills in terms of pasting, but there will be one
22 juror who doesn't get the change and they'll say, gee -- so
23 just add to it and that way, they will have both and you can
24 make appropriate reference to it in the summations but I'm
25 loathe to have documents that were in evidence and that the

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1 jury had an opportunity to see suddenly not being there
2 because sometimes my friends on the 17th floor get pretty
3 prickly about such things.

4 MR. HAGGANS: Understood, Your Honor.

5 THE COURT: Anything else from defense counsel?

6 MS. MACEDONIO: No, judge.

7 THE COURT: Anything else from the Government?

8 MR. PRAVDA: No, Your Honor.

9 THE COURT: Have a wonderful weekend, a relaxed one.

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11 (Matter adjourned to Monday, September 23, 2019 at 9:30 a.m.)

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Government's Exhibit 41-B 494

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Government Exhibit 213 535

Government Exhibit 214 540

Government Exhibit 215 540